

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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)  
LEAD CASE NO: 2:07-cv-10589-TPG  
IN re VIRGIN MOBILE USA IPO )  
LITIGATION )  
(SECURITIES CLASS ACTION)  
)  
)  
This document relates to:  
)  
ALL ACTIONS )  
)  
)  
)  
)  
)  
2 WEST, INC., On Behalf of Itself and All )  
Others Similarly Situated, ) DOCKET NO.: 1:07-cv-11625-UA  
Plaintiff, )  
)  
v. )  
VIRGIN MOBILE USA, INC., DANIEL H. )  
SCHULMAN, JOHN D. FEEHAN, JR., )  
LEHMAN BROTHERS, INC., MERRILL )  
LYNCH PIERCE FENNER & SMITH, INC. )  
and BEAR STEARNS & CO., INC. )  
Defendants. )  
)  
)

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**DECLARATION OF KIM E. MILLER IN SUPPORT OF THE MOTION OF THE  
VOLPE GROUP TO CONSOLIDATE ANY FUTURE RELATED ACTIONS; TO BE  
APPOINTED LEAD PLAINTIFF; AND TO APPROVE PROPOSED LEAD  
PLAINTIFF'S CHOICE OF COUNSEL**

I, Kim E. Miller, hereby declare as follows:

1. I am member of the law firm of Kahn Gauthier Swick, LLC.
2. Movant seeks appointment as Lead Plaintiff pursuant to Section 27(a)(3)(B) of the Securities Act of 1933 (the "Securities Act") in the above-captioned action (the "Action").
3. I submit this Declaration, together with the attached exhibits, in support of the Motion of the Volpe Group, to appoint the Volpe Group to serve as Lead Plaintiff on behalf of the Class and to approve Movant's choice of Kahn Gauthier Swick, LLC and Carella Byrne Bain Gilfillan Checchi Stewart & Olstein, P.C. as Co-Lead Counsel. I am fully familiar with the facts set forth herein.
4. Attached hereto as Exhibit A are true and correct copies of the sworn shareholder certifications of Volpe Group members Aaron Cheng, Zhao Li, John Mekari, Michael Volpe and Alan Whiting, along with a summary loss chart.
5. Attached hereto as Exhibit B is a true and correct copy of the press release published on November 22, 2007, on *Prime Newswire*, a well-known, national business-oriented publication, announcing the pendency of the lawsuit commenced by Michael Volpe, against defendants herein.
7. Attached hereto as Exhibit C are true and correct copies of the firm resumes of Kahn Gauthier Swick, LLC and Carella Byrne Bain Gilfillan Checchi Stewart & Olstein, P.C.

I declare under penalty of perjury under the laws of the state of New York that the foregoing facts are true and correct. Executed this 22<sup>nd</sup> day of January, 2008, at New York, New York.

/s/ Kim E. Miller

Kim E. Miller

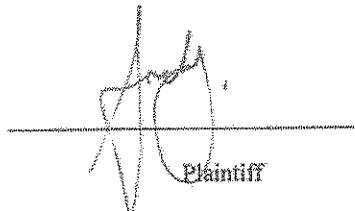
CERTIFICATION IN SUPPORT OF APPLICATION FOR LEAD PLAINTIFF

MANAHAN AARON, CHEN (name) ("plaintiff") declares, as to the claims asserted under the federal securities law, that:

1. Plaintiff has fully reviewed the facts of the complaint(s) filed in this action alleging violations of the securities laws and plaintiff is willing to serve as a lead plaintiff in this case and all other related cases that may be consolidated with it.
2. Plaintiff did not purchase securities of Virgin Mobile USA, Inc. at the direction of counsel or in order to participate in a private action under the federal securities laws.
3. Plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.
4. During the Class Period, plaintiff has executed transactions in the securities of Virgin Mobile USA, Inc. as follows. See Attached Schedule.
5. In the last three years, plaintiff has not sought to serve as a representative party on behalf of a class in an action filed under the federal securities laws, except as indicated herein.
6. Plaintiff will not accept payment for serving as a lead plaintiff beyond its pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class as ordered or approved by the Court.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: Dec 30<sup>th</sup>, 2007



A handwritten signature in black ink, appearing to read "Plaintiff", is written over a horizontal line. The signature is fluid and cursive, with a large, stylized initial letter.

Name of plaintiff:  
Schedule of plaintiff's Transaction(s) in  
Virgin Mobile USA, Inc.

## Purchase(s):

<u>Date</u>	<u>Units</u>	<u>Price</u>
Oct 11, 2007	8400	\$15.00--

## Sale(s):

<u>Date</u>	<u>Units</u>	<u>Price</u>
Oct 31, 2007	1600	\$11.50--
	1200	\$ 11.55--
	600	\$ 11.50--
Nov 16, 2007	2500	\$ 10.86--
	2500	\$ 10.90--

CERTIFICATION IN SUPPORT OF APPLICATION FOR LEAD PLAINTIFF

Zhao Li (name) ("plaintiff") declares, as to the claims asserted under the federal securities law, that:

1. Plaintiff has fully reviewed the facts of the complaint(s) filed in this action alleging violations of the securities laws and plaintiff is willing to serve as a lead plaintiff in this case and all other related cases that may be consolidated with it.
2. Plaintiff did not purchase securities of Virgin Mobile USA, Inc. at the direction of counsel or in order to participate in a private action under the federal securities laws.
3. Plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.
4. During the Class Period, plaintiff has executed transactions in the securities of Virgin Mobile USA, Inc. as follows. See Attached Schedule.
5. In the last three years, plaintiff has not sought to serve as a representative party on behalf of a class in an action filed under the federal securities laws, except as indicated herein.
6. Plaintiff will not accept payment for serving as a lead plaintiff beyond its pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class as ordered or approved by the Court.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: Jan 20, 2008, 2008



Plaintiff

Name of plaintiff: Zhao Li  
Schedule of plaintiff's Transaction(s) in  
Virgin Mobile USA, Inc.

## Purchase(s):

<u>Date</u>	<u>Units</u>	<u>Price</u>
Oct 11, 2007	400	16.27
	2400	16.28
	1200	16.27

## Sale(s):

<u>Date</u>	<u>Units</u>	<u>Price</u>
Nov 16, 2007	4000	10.50

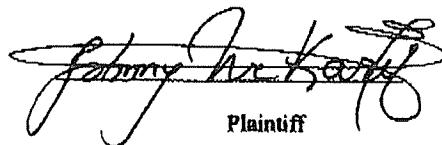
**CERTIFICATION IN SUPPORT OF APPLICATION FOR LEAD PLAINTIFF**

John A. Mekari (name) ("plaintiff") declares, as to the claims asserted under the federal securities law, that:

1. Plaintiff has fully reviewed the facts of the complaint(s) filed in this action alleging violations of the securities laws and plaintiff is willing to serve as a lead plaintiff in this case and all other related cases that may be consolidated with it.
2. Plaintiff did not purchase securities of Virgin Mobile USA, Inc. at the direction of counsel or in order to participate in a private action under the federal securities laws.
3. Plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.
4. During the Class Period, plaintiff has executed transactions in the securities of Virgin Mobile USA, Inc. as follows. See Attached Schedule.
5. In the last three years, plaintiff has not sought to serve as a representative party on behalf of a class in an action filed under the federal securities laws, except as indicated herein.
6. Plaintiff will not accept payment for serving as a lead plaintiff beyond its pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class as ordered or approved by the Court.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: 12/31, 2007

  
Plaintiff

Name of plaintiff: JOHN A. MEKARI

Schedule of plaintiff's Transaction(s) in

Virgin Mobile USA, Inc.

Purchase(s):

Date	Units	Price	Extension
10/10/07	2,000	* 15.35	= * 30,700 + fees
10/11/07	3,000	* 15.86	= * 47,580 + fees
			* <u>78,280 + fees</u>

Sale(s):

Date	Units	Price
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None to date

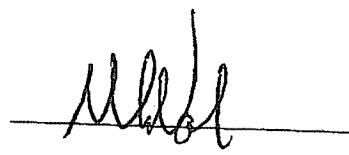
**CERTIFICATION IN SUPPORT OF APPLICATION FOR LEAD PLAINTIFF**

MICHAEL VIGRE (name) ("plaintiff") declares, as to the claims asserted under the federal securities law, that:

1. Plaintiff has fully reviewed the facts of the complaint(s) filed in this action alleging violations of the securities laws and plaintiff is willing to serve as a lead plaintiff in this case and all other related cases that may be consolidated with it.
2. Plaintiff did not purchase securities of Virgin Mobile USA, Inc. at the direction of counsel or in order to participate in a private action under the federal securities laws.
3. Plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.
4. During the Class Period, plaintiff has executed transactions in the securities of Virgin Mobile USA, Inc. as follows. See Attached Schedule.
5. In the last three years, plaintiff has not sought to serve as a representative party on behalf of a class in an action filed under the federal securities laws, except as indicated herein.
6. Plaintiff will not accept payment for serving as a lead plaintiff beyond its pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class as ordered or approved by the Court.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: 11-20, 2007



Plaintiff

Name of plaintiff: MICHAEL VARE  
Schedule of plaintiff's Transaction(s) in  
Virgin Mobile USA, Inc.

Purchase(s):

<u>Date</u>	<u>Units</u>	<u>Price</u>
10/16/07	5000	15 <sup>73</sup>
10/16/07	2000	15 <sup>55</sup>
11/14/07	111	114 <sup>2</sup>

Sale(s):

<u>Date</u>	<u>Units</u>	<u>Price</u>
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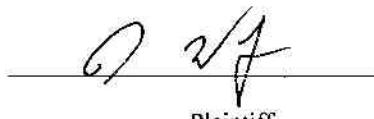
**CERTIFICATION IN SUPPORT OF APPLICATION FOR LEAD PLAINTIFF**

R. Alan Whiting (name) ("plaintiff") declares, as to the claims asserted under the federal securities law, that:

1. Plaintiff has fully reviewed the facts of the complaint(s) filed in this action alleging violations of the securities laws and plaintiff is willing to serve as a lead plaintiff in this case and all other related cases that may be consolidated with it.
2. Plaintiff did not purchase securities of Virgin Mobile USA, Inc. at the direction of counsel or in order to participate in a private action under the federal securities laws.
3. Plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.
4. During the Class Period, plaintiff has executed transactions in the securities of Virgin Mobile USA, Inc. as follows. See Attached Schedule.
5. In the last three years, plaintiff has not sought to serve as a representative party on behalf of a class in an action filed under the federal securities laws, except as indicated herein.
6. Plaintiff will not accept payment for serving as a lead plaintiff beyond its pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class as ordered or approved by the Court.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: Nov 30, 2007

  
\_\_\_\_\_  
Plaintiff

Name Of Plaintiff: R. Alan Whiting  
 Schedule Of Plaintiff's Transactions in Virgin Mobile USA, Inc.

Transaction Date	Settlement Date	Quantity	Description	Symbol	Price / Type	Net Amount
<b>Purchases</b>						
12-Oct-07	16-Oct-07	3,000	VIRGIN MOBILE USA INC-A	VM	15.65	(46,959.99)
12-Oct-07	16-Oct-07	3,000	VIRGIN MOBILE USA INC-A	VM	15.80	(47,409.99)
12-Oct-07	16-Oct-07	3,000	VIRGIN MOBILE USA INC-A	VM	15.85	(47,550.99)
12-Oct-07	16-Oct-07	4,000	VIRGIN MOBILE USA INC-A	VM	15.65	(62,609.99)
12-Oct-07	16-Oct-07	7,000	VIRGIN MOBILE USA INC-A	VM	16.00	(112,009.99)
12-Oct-07	16-Oct-07	7,000	VIRGIN MOBILE USA INC-A	VM	16.55	(115,834.02)
15-Oct-07	17-Oct-07	10,000	VIRGIN MOBILE USA INC-A	VM	15.22	(152,195.98)
16-Oct-07	19-Oct-07	<u>4,000</u>	VIRGIN MOBILE USA INC-A	VM	13.55	<u>(54,209.99)</u>
		41,000				(638,781)
<b>Sales</b>						
15-Oct-07	17-Oct-07	(10,000)	VIRGIN MOBILE USA INC-A	VM	15.15	151,483.70
15-Oct-07	18-Oct-07	(5,000)	VIRGIN MOBILE USA INC-A	VM	14.95	74,738.86
19-Oct-07	24-Oct-07	(100)	VIRGIN MOBILE USA INC-A	VM	13.08	
19-Oct-07	24-Oct-07	(3,000)	VIRGIN MOBILE USA INC-A	VM	13.10	
19-Oct-07	24-Oct-07	(7,000)	VIRGIN MOBILE USA INC-A	VM	13.09	
19-Oct-07	24-Oct-07	(5,000)	VIRGIN MOBILE USA INC-A	VM	13.10	
19-Oct-07	24-Oct-07	(5,000)	VIRGIN MOBILE USA INC-A	VM	13.10	263,196.02
22-Oct-07	25-Oct-07	<u>(5,900)</u>	VIRGIN MOBILE USA INC-A	VM	12.99	<u>76,624.52</u>
		(41,000)				566,043

**VOLPE GROUP LOSS CHART - VIRGIN MOBILE USA, INC.****Aaron Cheng**

BUY

Date	Units	Price	Total
10/11/2007	8400	15.00	126,000.00

SELL

10/31/2007	1600	11.50	18,400.00
10/31/2007	1200	11.55	13,860.00
10/31/2007	600	11.50	6,900.00
11/16/2007	2500	10.86	27,150.00
11/16/2007	2500	10.90	27,250.00
	8400		93,560.00
		<b>LOSS</b>	<b>32,440.00</b>

**Zhao Li**

BUY

Date	Units	Price	Total
10/11/2007	400	16.27	6,508.00
10/11/2007	2400	16.28	39,072.00
10/11/2007	1200	16.27	19,524.00
	4000		65,104.00

SELL

11/16/2007	4000	10.50	42,000.00
		<b>LOSS</b>	<b>23,104.00</b>

**John Mekari**

BUY

Date	Units	Price	Total
10/11/2007	2000	15.35	30,700.00
10/11/2007	3000	15.86	47,580.00
	5000		78,280.00
		HELD VALUE	42,250.00
		<b>LOSS</b>	<b>36,030.00</b>

**Michael Volpe**

BUY

Date	Units	Price	Total
10/16/2007	5000	15.73	78,650.00
10/16/2007	2000	15.55	31,100.00
11/14/2007	111	11.42	1,267.62
			111,017.62
		HELD VALUE	60,087.95
		<b>LOSS</b>	<b>50,929.67</b>

**Alan Whiting**

BUY

**VOLPE GROUP LOSS CHART - VIRGIN MOBILE USA, INC.**

Date	Units	Price	Total
10/16/2007	7000	15.65	109,550.00
10/16/2007	3000	15.80	47,400.00
10/16/2007	3000	15.85	47,550.00
10/16/2007	7000	16.00	112,000.00
10/16/2007	7000	16.55	115,850.00
10/17/2007	10000	15.22	152,200.00
10/19/2007	4000	13.55	54,200.00
	41000		638,750.00
<b>SELL</b>			
10/17/2007	10000	15.15	151,500.00
10/18/2007	5000	14.95	74,750.00
10/24/2007	100	13.08	1,308.00
10/24/2007	7000	13.09	91,630.00
10/24/2007	13000	13.10	170,300.00
10/25/2007	5900	12.99	76,641.00
	41000		566,129.00
		<b>LOSS</b>	<b>72,621.00</b>
		<b>TOTAL LOSS</b>	<b>215,124.67</b>

price applied to held shares: \$8.45 - closing price of Virgin Mobile USA, Inc. shares on 11/21/2007.
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Press Release

Source: Kahn Gauthier Swick, LLC

## Investor Alert: KGS Announces Initial Filing of Securities Class Action Lawsuit Against Virgin Mobile USA, Inc. -- VM

Thursday November 22, 1:01 am ET

NEW ORLEANS, Nov. 22, 2007 (PRIME NEWSWIRE) -- Kahn Gauthier Swick, LLC ('KGS') has filed the first class action lawsuit against Virgin Mobile USA, Inc. ('VM USA' or the 'Company') (NYSE:[VM](#) - [News](#)) in the United States District Court for the District of New Jersey, on behalf of shareholders who purchased the common stock of VM USA in connection with the Company's IPO on or about October 11, 2007, or who purchased shares thereafter in the open market. No class has yet been certified in this action.

UNLESS A CLASS IS CERTIFIED, YOU ARE NOT PERSONALLY REPRESENTED BY COUNSEL UNLESS YOU RETAIN AN ATTORNEY.

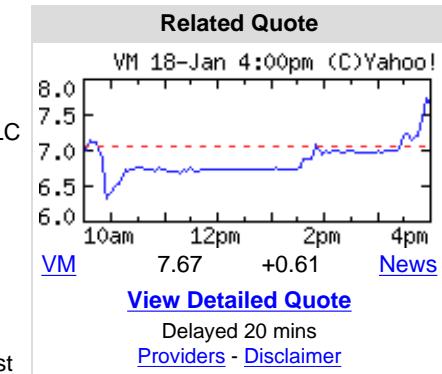
If you purchased shares of VM USA in connection with the IPO or if you purchased shares thereafter in the open market, you are urged to contact Lewis Kahn, Managing Partner, KGS, toll free 1-866-467-1400, ext. 100, via cell phone at 504-301-7900, or by email at [lewis.kahn@kgscounsel.com](mailto:lewis.kahn@kgscounsel.com) to learn about your legal rights and how this action may benefit you. For further information on KGS, please visit <http://www.kgscounsel.com>.

ADVERTISEMENT

VM USA, certain of its officers and directors, certain controlling majority shareholders, and the Company's underwriters are charged with including, or allowing the inclusion of, materially false and misleading statements in the Registration Statement and Prospectus issued in connection with the IPO, in violation of the Securities Act of 1933.

The Complaint charges that VM USA raised over \$412.5 million through the issuance of 27.5 million shares, despite the Registration Statement's false and misleading statements. Specifically, defendants each failed to conduct an adequate due diligence investigation into the Company prior to the IPO, and they also each failed to reveal, at the time of the IPO, that Virgin Mobile was also not performing according to plan and that results for the third quarter of 2007 -- the period ended a full 2 weeks prior to the VM USA IPO -- showed growing losses as expenses rose and business slowed, indicating that the Company would be forced to revise downward its near-term forward financial and operational guidance.

On November 16, 2007, approximately one month after the IPO, investors learned the truth about VM USA's financial and operational condition, after defendants revealed that the Company had suffered a widening loss for the third quarter, the period ended September 30, 2007, as a result of rising expenses -- a loss of \$7.3 million, or (\$0.15) per share, compared with a loss of only \$5.1 million, or (\$0.10) per share, in the same period the prior year. These results also contrasted the \$28.9 million in net income, and profits of \$0.55 per share reported in the first six months of 2007, reported prior to the IPO. Further, Defendants also revealed that fourth-quarter 2007 outlook called for between 350,000 and 400,000 net customer additions, an anemic amount analysts described as ``weak," and that 4Q:07 guidance would be what was described as ``well



### Related News Stories

- [Investor Alert: Only 1 Day Left for Virgin Mobile USA, Inc. Shareholders to Request Lead Plaintiff Position in Securities Class Action Lawsuit -- VM](#) - PR Newswire (Mon Jan 21)
- [Law Offices of Howard G. Smith Announces Class Action Lawsuit Against Virgin Mobile USA, Inc.](#) - PR Newswire (Wed Jan 16)
- [Virgin Mobile Marketing Chief to Leave](#) - AP (Wed Jan 16)
- [Virgin Mobile USA Names Bob Stohrer Chief Marketing Officer](#) - PR Newswire (Wed Jan 16)

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- By industry: [Wireless Communications](#)

below" expectations.

On this news, shares of VM USA fell nearly 30% in intra-day trading, from an opening trading price of \$11.09 per share to a trading low of \$8.07 per share before closing the trading day at \$9.10 per share, on exceedingly high volume of 6.512 million shares.

If you wish to serve as lead plaintiff in this class action lawsuit, you must move the Court no later than January 22, 2008. Any member of the purported class may move the Court to serve as lead plaintiff through counsel of their choice, or may choose to do nothing and remain an absent class member. If you would like to discuss your legal rights, you may e-mail or call KGS Managing Partner Lewis Kahn, without obligation or cost to you, toll free 1-866-467-1400, ext. 100, or by email at [lewis.kahn@kgscounsel.com](mailto:lewis.kahn@kgscounsel.com). To learn more about KGS, you may visit <http://www.kgscounsel.com>. KGS focuses its practice on securities class action litigation, and has been appointed lead counsel in numerous federal securities class actions.

**SPECIAL NOTICE:** While federal law does not prohibit other lawyers from ``announcing'' this class action through the issuance of other press releases, KGS is the law firm that researched, investigated, drafted, and filed the securities class action case against VM USA. If you are a VM USA shareholder who decides to contact one of these lawyers, KGS reminds you to fully interview any such lawyer to assure that he or she thoroughly understands the facts surrounding the substantive claims KGS has filed in Court. It is critically important that interested parties carefully evaluate any other firm that may be competing with KGS to prosecute the VM USA class action. Critical components of a law firm's ability to successfully prosecute this action and obtain a strong recovery for you include its knowledge of applicable federal securities laws, the resources it will dedicate to prosecution of the case (including the number of lawyers the firm has available for the Virgin Mobile USA class action), AND especially the quality of the firm's work.

More information on this and other class actions can be found on the Class Action Newsline at <http://www.primenewswire.com/ca/>

### Contact:

KGS  
 Lewis Kahn  
 1-866-467-1400, ext. 100  
[lewis.kahn@kgscounsel.com](mailto:lewis.kahn@kgscounsel.com)

Source: Kahn Gauthier Swick, LLC

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[\(What's This?\)](#)





Kahn Gauthier Swick, LLC (“KGS”) ([www.kgscounsel.com](http://www.kgscounsel.com)) is a law firm with offices in New Orleans and New York City. KGS focuses predominantly on class action litigation as well as mass tort litigation, in the areas of securities and consumer fraud, and other complex litigation. KGS was formed in 2000 as a partnership between established class action attorneys. Since its inception KGS has recovered tens of millions of dollars for its clients.

KGS’s lawyers have significant experience litigating complex securities class actions. Among other cases the firm is involved in, KGS has been appointed to leadership roles in the following securities class actions:

*In re U.S. Auto Parts Networks,  
Inc. Securities Litigation  
Lead Counsel* *C.D. Cal.*

*In re Optionable, Inc. Securities  
Litigation  
Lead Counsel* *S.D.N.Y.*

*In re Xethanol Corporation  
Securities Litigation  
Lead Counsel* *S.D.N.Y.*

*Pixelplus Co. Ltd.  
Co-Lead Counsel* *S.D.N.Y.*

*In re Witness Systems Inc.  
Securities Litigation  
Co-Lead Counsel* *N.D. Ga.*

*Whitney Information Network  
Lead Counsel* *M.D. Fla.*

*Bodisen Biotech, Inc.  
Co-Lead Counsel* *S.D.N.Y.*

*Pegasus Wireless Corp.*  
*Lead Counsel*

*S.D. Fla.*

*In re Xinhua Finance Media, Ltd.*  
*Securities Litigation*  
*Co-Lead Counsel*

*S.D.N.Y.*

*Terayon Comm. Systems Inc.*  
*Co-Lead Counsel*

*N.D. Cal.*

*Gaming Partners*  
*Co-Lead Counsel*

*D. Nev.*

## LAWYERS

### **Partners**

#### ***Lewis S. Kahn***

Lewis Kahn serves as the managing partner of KGS. Along with the representation of thousands of plaintiffs in mass tort cases and thousands of wronged investors in class actions throughout the United States, Mr. Kahn has been appointed to various leadership positions in federal class action litigation. Among other appointments, Mr. Kahn served as a member of the Plaintiffs' Steering Committee in MDL 1481, *In re Meridia Products Liability Litigation*, appointed by Judge James S. Gwin in the United States District Court for the Northern District of Ohio, Eastern District.

Mr. Kahn is often turned to by the media for expert commentary in the field of class action litigation. KGS has been profiled in the *New York Times*, *Washington Post*, *Boston Globe*, and many other media outlets. Mr. Kahn holds a Bachelor's degree from New York University and received a Juris Doctor from Tulane Law School in 1994. He has been a member in good standing of the Louisiana State Bar Association since 1995, and is a member of the Federal Bars for the Eastern, Middle and Western Districts of Louisiana.

***Michael A. Swick***

Michael A. Swick heads KGS's Securities Litigation Group. Mr. Swick began his career in the mid 1990's working at several of the nation's leading securities class action law firms.

Over the past decade, Mr. Swick has played a significant role in investigating corporate fraud, initiating litigations, and drafting amended complaints in cases involving the Securities Act of 1933 and the Securities Exchange Act of 1934.

Mr. Swick received a Juris Doctor from Tulane Law School in 1994. Mr. Swick received a Masters of Political Philosophy from Columbia University in 1989 and a B.A. in Philosophy and Political Science from State University of New York at Albany in 1988. Mr. Swick was admitted to the State Bar of New York in 1996 and is a member of the Federal Bar for the Southern District of New York.

***Kim E. Miller***

Kim E. Miller is a partner of Kahn Gauthier Swick, LLC, who specializes in securities, consumer, and commercial litigation. Prior to joining KGS in 2006, Ms. Miller was a partner at one of the nation's leading plaintiff class action firms. Ms. Miller also spent two years as a securities litigator on the defense side while at Gray Cary Ware & Friedenrich LLP in Palo Alto, California.

Over the course of her career, Ms. Miller has represented tens of thousands of wronged investors and consumers in class actions filed throughout the country. Among other cases, Ms. Miller has worked on more than 25 cases involving allegations of improper directed brokerage arrangements and excessive charges in mutual fund cases brought pursuant to the 1934 Securities Exchange Act and/or the Investment Company Act of 1940. Ms. Miller was also involved in the mutual funds late trading/market timing litigation.

Ms. Miller has been involved in a variety of cases in which large settlements were reached, including:

**Settlement value of \$127.5 million** *Spahn v. Edward D. Jones & Co., L.P.*, 04-cv-00086-HEA (E.D. Mo.)

**\$110 Million Recovery.** *In re StarLink Corn Products Liability Litigation*, MDL No. 1403 (N.D. Ill.)

**\$100 Million Recovery.** *In re American Express Financial Advisors, Inc. Sec. Litig.*, 1:04-cv-01773-DAB (S.D.N.Y.)

Ms. Miller was also a member of the trial team that obtained a federal jury verdict in favor of plaintiffs in a case involving the aiding and abetting of a mortgage company's fraudulent lending practices. *Austin v. Lehman Commercial Paper*, No. 04-55942 (DOC)(C.D. Cal.).

Ms. Miller graduated with honors from Stanford University in 1992 with a double major in English and Psychology. She earned her Juris Doctor degree from Cornell Law School, *cum laude*, in 1995. While at Cornell, Ms. Miller was the Co-Chair of the Women's Law Symposium, Bench Brief Editor of the Moot Court Board, and a member of the Board of Editors of the Cornell Journal of Law & Public Policy. She is admitted to practice in the States of California and New York and before the United States District Courts for the Southern and Eastern Districts of New York and the Northern, Southern, and Central Districts of California. Her *pro bono* work includes representing families of 9/11 victims at *In re September 11 Victim Compensation Fund* hearings. Ms. Miller has also served as a fundraiser for the New York Legal Aid Society.

#### ***Stuart J. Guber***

Stuart J. Guber is a partner in Kahn Gauthier Swick, LLC who specializes in securities class actions and derivative litigation. Prior to joining KGS, Mr. Guber was a

partner at several large securities class action firms, where he had primary responsibility for the following cases:

*In re Rite Aid Pharmacy Sec. Litig.*, MDL 1360 (E.D.Pa) (\$320 million settlement);

*In re Providian Financial Corp. Sec. Litig.*, C 01-3952 (N.D. Cal.) (\$65 million settlement);

*In re Bell South Corp. Sec. Litig.*, No. 1:02 2142 (N.D.Ga.) (\$35 million settlement);

*In re Campbell Soup Sec.Litig.*, No. 1:00-CV-00152 (D. N.J.)( \$35 million settlement);

*Paine v. Microwarehouse, Inc.*, No. 3:96-CV-01920 (D. Conn.) (\$30 million settlement);

*In re Premier Technologies, Inc. Sec. Litig.* No. 98-CV-1804 (\$20.75 million settlement);

*In re Boston Chicken, Inc. Sec. Litig.*, No. 1:97-CV-01435 (D.Colo.)( \$20 million settlement);

*Nepomuceno v. Knights of Columbus*, No. Civ.A. 96 C 4789 (N.D. Ill.) (\$22 million settlement in life insurance vanishing premium policy consumer fraud case);

*Criddle v. CNF, Inc.*, C.A. No. 434340 (Cal.Sup.Ct.)(successful derivative action resulted in corporate governance changes to address specific misconduct alleged in complaint relating to safety and maintenance reporting issues).

Mr. Guber has spoken at the Atlanta Bar subsection on Securities and Corporate Litigation on the effect of the U.S. Supreme Court's decision in *Dura Pharmaceuticals* on pleading loss causation in Section 10(b) claims under the Securities Exchange Act of 1934 and on the options backdating phenomena. He has appeared as a panel member at the Georgia Bar's Annual CLE Seminar on Securities and Corporate Litigation and authored a paper entitled "The Application of Federal Rule of Civil Procedure 9(b) to Pleading Claims under the Securities Act of 1933." He also was trial counsel in *Robbins*

v. *Koger Properties*, Inc in which the jury rendered a verdict for \$81.3 million against the accounting firm of Deloitte & Touche.

Mr. Guber graduated from Temple University in 1986 with a major in Accounting. He earned his Juris Doctor degree from Temple University School of Law in 1990. Mr. Guber is admitted to practice in the States of Georgia and Pennsylvania and before the United States District Courts for the Northern District of Georgia, Eastern District of Pennsylvania, District of Colorado, and Eastern District of Michigan. He is admitted to practice before the United States Circuit court of Appeals for the First, Third, Eighth, Ninth, Tenth and Eleventh Circuits.

***Kevin L. Oufnac***

Kevin Oufnac joined Kahn Gauthier Swick, LLC in 2006. Prior to becoming a partner in KGS, Mr. Oufnac spent many years litigating cases throughout the United States with several of the nation's most recognized law firms, including Ness, Motley, Loadholt, Richardson, & Poole, PA; Richardson, Patrick, Westbrook & Brickman, LLC; and Motley Rice, LLC. In addition to individual cases, some of the litigations in which Mr. Oufnac has participated include *In re Community Bank of Northern Virginia and Guaranty National Bank of Tallahassee Second Mortgage Loan Litigation*, No. 03-0425 (W.D. Pa.) (which resulted in a settlement of \$33 million to the class members), and *Dundon v. U.S. Bank*, No. 01-408 (S.D. Ill.) (which resulted in a settlement of \$26 million to the class members).

Mr. Oufnac received his Juris Doctor in 1995 from the Loyola University School of Law, New Orleans. He is a member of the Louisiana State Bar Association, the South Carolina State Bar Association, and the Association of Trial Lawyers of America. Mr. Oufnac has also been admitted to the United States Court of Appeals for the Fourth Circuit and the United States District Courts for the Eastern District of Michigan, the

Eastern District of Louisiana, and the District of South Carolina.

### **Of Counsel**

***Charles C. Foti, Jr.***

Charles C. Foti, Jr. served as the Attorney General for the state of Louisiana from 2004-2008, after serving for 30 years as one of the most innovative law enforcement officials in the United States as Orleans Parish Criminal Sheriff. Throughout his career, General Foti has remained committed to public service.

As Attorney General for the state of Louisiana, General Foti's achievements include:

- \* *Recovered over \$24 million for Louisiana consumers in consumer fraud matters, \$8 million in anti-trust litigation, \$9.1 million for state employees through Office of Group Benefits, over \$2 million for auto complaints, over \$33 million in Medicaid Fraud.*
- \* *Investigated and apprehended numerous contractor fraud criminals in the wake of the worst natural disaster in United States history, Hurricane Katrina.*
- \* *Louisiana Internet Crimes Against Children Task Force doubled the number of arrests for crime against children.*

In his tenure as Orleans Parish Criminal Sheriff, General Foti oversaw the enormous expansion of the parish jail, growing from 800 prisoners in 1973 to more than 7,000 currently. As the prison expanded, so did the need for education and rehabilitation skills for prisoners. As Sheriff, General Foti started the first reading and GED programs, work release programs, drug treatment programs and the nation's first boot camp at the local level, all to prepare prisoners for a future without crime. Administratively, General Foti managed a multi-million dollar budget and a complex organization of more than 1,400 employees.

General Foti has for many years been an advocate for the elderly. As Sheriff, he and a small army of volunteers provided Thanksgiving meals for senior citizens in the New Orleans area who were alone or couldn't afford a proper holiday feast. He started a back to work program for senior citizens that helps people over the age of 55 get back into the workforce.

General Foti received his Juris Doctor degree from Loyola University Law School in 1965, after serving his country in the United States Army from 1955 through 1958.

### ***Glen Woods***

Glen Woods joined Kahn Gauthier Swick, LLC as Of Counsel in 2006. Mr. Woods has tried over two hundred business and tort cases in Louisiana state and federal courts. Mr. Woods achieved a \$346 million verdict in 1997 in a breach of contract case against Entergy and a \$55 million verdict against ADP for its involvement in the New Orleans Fairgrounds fire years earlier. Mr. Woods began his legal career in 1985 as an Assistant District Attorney to Harry Connick Sr. and was appointed Special Prosecutor responsible for capital homicides. Mr. Woods is admitted to practice in all state courts in the State of Louisiana, the United States District Court for the Eastern District of Louisiana, and the United States Court of Appeals for the Fifth Circuit. Mr. Woods received his Juris Doctor from Southern University in 1984 and received a Bachelor of Arts in Sociology from the University of Southwestern Louisiana in 1979.

### **Associates**

#### ***Catherine R. Gauthier***

Catherine R. Gauthier holds a Bachelor of Arts degree from the University of Louisiana at Lafayette, having graduated *magna cum laude* in 2000. She received a Juris Doctor from Loyola University School of Law, New Orleans and was admitted to

practice law in the State of Louisiana in 2005. She is a member of the Louisiana State Bar Association, the American Bar Association and the American Association of Trial Lawyers.

***George S. Mentz***

George Mentz is licensed to practice law in Louisiana and the Federal Courts of the EDLA and is a member of the Tax, Trusts & Estates & International Law Sections of the Bar. Mr. Mentz is chiefly a consultant and professor in the areas of ethics, consumer and victims rights, international law, business law, and financial law. Mr. Mentz has recently been featured or quoted in the Wall Street Journal, Financial Times Asia, China Daily, The Arab Times, The Hindu National (India), and The El Norte Mexico Newspapers. Mr. Mentz has written and published in multiple venues around the world in Radio, TV, magazines, web-casts, and journals and has published over 22 books and training manuals.

Professor Mentz serves on several boards and advisory committees in the US, Europe, and Asia. Mr. Mentz has a JD, MBA, certified financial consultant credential and financial planner license. Mr. Mentz has provided specialized consulting over the years as to valuation and quantum damages and has testified and been accepted as an expert in NASD securities arbitration hearings. Mr. Mentz was recently appointed to the Institutional Advisory Board of the Global Finance Forum in Switzerland, the ERISA Fiduciary Guild Advisory Board, and the AML Anti Money Laundering Committee for ICA USA, and was recently re-elected to the Financial Training and Ethics Board for AAFM Worldwide for 2007. Prof. Mentz has trained thousands of people in the areas of law, finance, ethics, tax, corporate governance, investments, and wealth management, and has taught over 100 law, business, and ethics courses at the graduate and undergraduate level over the last ten years.

Mr. Mentz earned his Juris Doctor from Loyola University School of Law, New Orleans. Mr. Mentz was Chairman and Faculty Advisor for the Tax and Estate Planning Law Review at Loyola University. Further, Mr. Mentz holds an MBA in International Business and Financial Planning from Loyola, as well as a BA with a focus on International Politics.

***Sarah Catherine Boone***

Sarah Catherine Boone holds a Bachelor of Arts in Philosophy from the University of Southern California and a Master of Fine Arts in Writing from the Master of Professional Writing Program at USC. She received her Juris Doctor from Tulane Law School and was admitted to practice law in the State of Montana in 2007. She is a member of the Montana State Bar Association and she has been admitted to the United States District Court for the District of Montana.

**CARELLA, BYRNE, BAIN, GILFILLAN,  
CECCHI, STEWART & OLSTEIN**

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## Carella, Byrne

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### **AN INTRODUCTION TO CARELLA, BYRNE**

Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein, with offices in Roseland, New Jersey, had its origins in a partnership created in 1976 by Charles C. Carella, John N. Bain and John G. Gilfillan, III. Since then, the firm has grown from four attorneys to fifty. In 1990, the firm merged with two others: Bozonelis and Woodward of Chatham, New Jersey, and Cecchi, Brody & Agnello, of Lyndhurst, New Jersey.

Throughout our history, our goal has not been growth for growth's sake, but to be a diversified full-service firm that offers our clients a depth of experience that is virtually unmatched. Most importantly, our growth has been a studied one: an approach which has enabled us to maintain the energy and cooperative spirit of a small practice, allowing us to respond quickly and creatively to our clients' problems.

We have significant strength in complex litigation, federal class action litigation, intellectual property, corporate, health care, public financing, environmental, labor, tax and administrative law. This level of experience offers our corporate clients very broad-based legal representation.

We have long been recognized as one of the leading New Jersey law firms, a reputation that has helped us attract a wide spectrum of clients -- from individuals to multinational corporations; from small businesses to non-profit organizations; from zoning boards to state governments.

Today, Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein is an established and successful law firm that is ready to serve you or your organization with a breadth and depth of experience rare in a firm our size.

To help us serve our clients' promptly and in a cost effective manner, we have a full complement of law clerks, paralegals, word processors and support staff, and state-of-the-art computer and word processing systems, including optical scanners, laser printers, and Westlaw.

We are committed to quality and diversity in our practice areas. Diversity allows our firm to remain a competitive force in the legal marketplace. The firm's commitment to the highest quality of legal work walks hand-in-hand with its commitment to employ the highest quality of diverse people so that we can best serve all of the needs of our clients.

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### GENERAL LITIGATION

The Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein litigation department participates in a broad range of contested matters. We represent corporations in derivative suits and with respect to allegations of breach of federal and state securities regulations. Additionally, we represent institutions and national companies in warranty, franchise and dealer termination actions; medical malpractice defense claims; and real estate matters, including planning board, board of adjustment proceedings and fair-share housing cases.

### **Technical Litigation**

We are uniquely staffed to handle complex technical litigation. In addition to legal training, a number of attorneys have degrees and experience in chemical, electrical, mechanical and biomedical engineering. Litigation cases involve patents, trademarks, trade secrets, copyrights, unfair competition and construction, as well as architectural and engineering malpractice.

### **Environmental Litigation**

We handle environmental cases involving current owner liability and third-party common law claims, plus cases under federal and state statutes such as the Federal Water Pollution Control Act, ECRA, the Spill Act, the Resource Conservation Recovery Act (as amended by the Hazardous and Solid Waste Amendments of 1984), the Clean Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation Liability Act of 1980 (as amended by the Superfund Amendment and Reauthorization Act of 1986), and many others. We have attorneys expertly trained in environmental matters with a background uniquely suitable to rendering appropriate advice to our corporate and individual clients.

### **Medical Malpractice Defense**

Medical malpractice defense work is one of the busiest areas of our litigation practice. We represent a number of major health care institutions, and serve as primary defense counsel for insureds of major insurance companies. During our history, we have represented physicians, dentists, podiatrists, chiropractors, nurses, nurse midwives, and hospitals in a variety of complex litigated matters throughout the state courts.

### **Intellectual Property Expertise**

Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein is nationally recognized in the fields of patent, trademark, copyright, unfair competition, trade secret law and antitrust law as applied domestically and internationally. We have broad technical expertise in chemical, mechanical and electrical engineering; physics; organic chemistry; biochemistry; commercial and industrial building construction, and road and bridge construction; sewage and waste management, including toxic and hazardous waste, radwaste and environmental control. A number of our partners and associates are registered to practice before the U.S. Patent and Trademark Office.

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Our particular litigation expertise is in U.S. District Courts and circuit Courts of Appeal in California, Illinois, Texas, New York, Pennsylvania, Florida and New Jersey, as well as the Court of Appeals for the Federal Circuit.

We also maintain close ties with associate counsel in the United Kingdom, Japan, West Germany, Canada, Italy, France, Austria, Taiwan, Korea, Australia and the Peoples Republic of China. We have controlled and/or participated in patent and other intellectual property litigation in Japan, West Germany, the United Kingdom, Canada, Australia, New Zealand and Austria.

What's more, we offer many other intellectual property services, including licensing and preparation and prosecution of patent applications around the world.

### **Corporate and Financial**

Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein provides all legal services involving the sale, purchase and reorganization of a business, including creation of corporations, partnerships and limited partnerships, mergers and acquisitions, public and private corporate financing, and representation in regulatory compliance cases.

### **Banking**

We have broad experience in commercial lending matters (secured and unsecured), representing both lenders and borrowers; and have counseled banks in all aspects of operations. We have represented institutions in both state and federal regulatory compliance, and in all phases of loan work-outs and financial restructurings. Our experience also extends to commercial litigation and foreclosures.

All too often, financial institutions face breach of both secured and unsecured loan agreements. So to help our clients preserve their banking relationships with their customers, we regularly handle work-outs, no matter how simple or complex. We've handled multiparty and multistate transactions involving construction, apartment complexes, warehouse lines of credit and inventory financing.

### **Savings and Loan Conversions**

We have helped savings and loan associations convert from mutual ownership to stock ownership. These include standard conversions, modified conversions, supervisory conversions and holding company formations. Services range from contract negotiation and completion, to regulatory authority application preparation and follow-up. And after conversion, we provide general counsel.

### **Mergers and Acquisitions**

Our firm has counseled corporate clients on mergers and acquisitions, with a special emphasis on the acquisition or divestiture of stand-alone businesses. Clients have included large corporations filling in product lines; small, privately held corporations which are liquidating; and large corporate division managers involved in a management buy-out. We counsel clients on

## Carella, Byrne

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employee issues, environmental concerns, liability and contractual issues, regulatory matters and tax issues.

### **Creditors' Rights and Bankruptcy**

Our firm provides comprehensive legal expertise for clients involved in both corporate and individual insolvencies. We have represented corporate debtors-in-possession, corporate trustees, creditors committees and secured and priority parties in reorganizations and liquidations.

We have expertise in those areas impacting on current bankruptcies including tax (including ERISA), environmental (including state and federal regulations), labor, admiralty, intellectual property, general corporate transactions and commercial and corporate litigation.

### **Public Finance**

We are a nationally recognized Bond Counsel firm. This means that the investment community looks to us as an expert in public finance law, and that our approving legal opinions are relied on by investors as to the legality and enforceability of tax-exempt obligations.

We have served as Bond Counsel for the issuance of hundreds of millions of dollars of tax-exempt financings for municipalities and local, county and state authorities. And in this capacity, we have assisted in financing everything from the purchase of a town's computer system to the building of a resource recovery facility, to the repair of the Garden State Parkway.

In addition, we have served as underwriters' counsel and counsel to national investment banking firms, and as general counsel to companies obtaining tax-exempt loans for industrial development.

### **Class Action Litigation**

#### **Exxon Dealer Class Action**

In 2002 Carella Byrne began representing the State of New Jersey in a nationwide class-action brought on behalf of a class of Exxon dealers against Exxon in the Southern District of Florida. Eventually, Carella Byrne's representation included not only the State of New Jersey, but also the Commonwealth of Virginia and the State of Maryland. I handled the firm's representation in the Exxon matter in connection with proceedings before the District Court as well as the 11<sup>th</sup> Circuit Court of Appeals.

In 2005, Exxon and Class Counsel reached a settlement which required Exxon to pay \$1,000,070,000 into a settlement fund which would then be utilized to pay claims submitted to a Special Master by over 10,000 class members. On behalf of the State of New Jersey, Carella, Byrne participated in the settlement negotiations and assisted class counsel achieve an overwhelming victory for the class.

Further, in connection with the settlement of the class' case, the Honorable Alan Gold, U.S.D.J., appointed this firm (and co-counsel Wicker, Smith) to represent the interests of 34

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States as “States’ Counsel”, in the post-settlement claims administration process. In particular, our charge was to insure that only valid claims are paid to actual victims, and that the residuary estate left after the distribution of valid claims, is paid over to the various State Governments whom we represent. That assignment is ongoing.

### **AOL/Time-Warner Class Action**

Carella Byrne also represented the State of New Jersey as co-lead counsel in a class action entitled *Treasurer of New Jersey, John E. McCormac, on behalf of the State of New Jersey, Department of Treasury, Division of Investment, The Common Pension Fund, DCP Equity Fund, NJ Best Pooled Equity Fund, The Supplemental Annuity Collective Trust And The Trustees for the Support of Public Schools v. AOL Time Warner Inc., et al.*, Superior Court of New Jersey, Law Division, Mercer County, Docket No. MER-L-1349-03 (the “AOL” class action).

The AOL class action sought to compensate the New Jersey pension fund for losses sustained as a result of the merger between Time Warner and AOL. Significantly, this complex securities case involved the production and management of more than fifteen million pages of documents, as well the review and coding of the materials for use during trial. As a result of our efforts, as well as our co-counsel, this complex securities action was mediated and settled for in excess of \$50,000,000 for the State pension fund.

### **KPMG Tax Shelter Class Action**

Carella Byrne was also co-counsel for the class with respect to a class action entitled *MARVIN SIMON, as Authorized Representative for The Marvin Simon Trust, as amended, for Palm Investors, LLC and for The Jeffrey Markman 1993 Irrevocable Trust, MARILYN SIMON, CLAUSE HARRIS, ANN HARRIS, BEN SIMON, HEIDI SIMON, BRITT SIMON, KIM FINK, AMY GOLDBERG, STEFAN RESSING, Individually and as Trustee of The S. Ressing 1999 Trust, FITZROY VENTURES, LLC, MICHAEL LE, Individually and as Trustee of the ML Le 1999 Trust, and MACKENZIE VENTURES, LLC v. KPMG LLP and SIDLEY AUSTIN BROWN & WOOD LLP*, United States District Court, District of New Jersey, Civil Action No. 05-3189(DMC).

The *Simon* class action involved allegations against KPMG, and the law firm of Sidley Austin Brown & Wood, stemming out of their role in the promotion of fraudulent off-shore tax shelters. The case settled for approximately \$200,000,000, and was approved by the United States District Court, District of New Jersey. Carella Byrne was instrumental in achieving this significant settlement over vigorous objections from certain class members. Indeed, to achieve the settlement three full days of plenary hearings were held before the District Court, where both fact witnesses and expert witnesses testified. Carella, Byrne handled all aspects of the plenary hearing..

### **Merck/Vioxx Securities Class Action**

In September 2006, Carella Byrne was appointed Co-Liaison counsel for the class in the multi-billion dollar securities class action against Merck & Co. arising out of the withdrawal of Vioxx from the market in 2004. This significant securities class action is ongoing and is presently on appeal before the United States Court of Appeals for the Third Circuit.

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### Rail Fuel Surcharge Class Action

In May 2006 Carella, Byrne, along with Quinn, Emmanuel, Urquhart Olivier & Hedges and others, filed the first nation-wide class action against the five major United States railroads alleging that they engaged in a price-fixing conspiracy through the use of inflated rail fuel surcharges, *Dust Pro, Inc. v. CSX Transportation, Inc., et. al.*, Civil Action No. 07-2251 (DMC). This significant nationwide antitrust case has been consolidated by the Panel on Multi District Litigation in the District of Columbia with approximately 20 other copycat complaints filed around the nation after the filing of the Dust Pro complaint.

### Wachovia ERISA Class Action

Carella Byrne is co-counsel on behalf of the class in *Serio, et al. v. Wachovia Securities LLC*, Civil Action No. 06-4681(DMC), which was brought on behalf of former Prudential Financial financial advisors and branch managers whose deferred compensation contributions were forfeited when they left employment with Wachovia Securities. The plaintiffs argue that the respective deferred compensation plans are, in fact, “retirement plans” under ERISA and, as a result, the employee contributions should not have been forfeited. Alternatively, the plaintiffs argue that they were constructively discharged as a result of adverse employment conditions which made it impossible for them to perform their jobs and, as a result, their accounts should not have been forfeited under the terms of the respective plans.

Carella Byrne and its co-counsel recently defeated a motion to dismiss the complaint and are in the process of mediating the claims, the first class-wide attempt to settle MasterShare claims against Wachovia.

### Other Class Actions

Carella Byrne is also currently prosecuting, either as co-lead counsel or co-counsel, numerous other class actions in this District involving securities law violations and consumer law violations. These class actions include:

- *Sampang, et al. v. AT&T Mobility LLC, et al.*, Civil Action No. 07-5324(JLL)(ETF fees)
- *Monday v. Locus Telecommunications, Inc.*, Civil Action No. 07-02659(PGS) (calling card fees)
- *Ramirez v. Lycatel, LLC*, Civil Action No. 07-05533(FSH)(calling card fees)
- *Ramirez v. Friendly Telecom, Inc.*, Civil Action No. 07-5589(FSH)
- *Ramirez v. Roslyn Telco Group*, Civil Action No. 07-5590(FSH)(calling card fees)
- *Ramirez v. SDIcard.com, Inc.*, Civil Action No. 07-5591(FSH)(calling card fees)
- *St. Louis Park Chiropractic v. Federal Insurance, et al.*, Civil Action No. 07-3110(JAP)(MedPay)
- *Allied Medical, P.A. v. American International Insurance Company, et. al.*, Civil Action No. 07-4622(JAP)(MedPay)
- *Advanced Acupuncture Clinic, Inc. v. Allstate Insurance Co., et. al.*, Civil Action No. 07-4925 (JAP)(MedPay)

## Carella, Byrne

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- *Advanced Acupuncture Clinic, Inc. v. Farmers Insurance Exchange*, Civil Action No. 07-5445(JAP)(MedPay)
- *Innovative Physical Therapy v. MetLife Auto & Home, et al.*, Civil Action No. 07-5446(JAP)(MedPay)
- *Casey OIE, D.C. v. Travelers Indemnity Company*, Civil Action No. 07-5447(JAP)(MedPay)
- *William J. Langeland, D.C. v. Government Employee Insurance Company*, Civil Action No. 07-5448(JAP)(MedPay)
- *Davis Landscape v. Hertz Equipment Rental Corporation*, Civil Action No. 06-3830(DMC)(loss damage waiver fees)
- *Shiflet v. Mercedes Benz USA, LLC*, Civil Action No. 07-5750(DRD)(consumer fraud)
- *Jackson v. Alpharma*, Civil Action 07-3250(GEB)(unpaid overtime)
- *In re N.J. Affordable Homes*, 05-60442(DHS)(defendant class of lenders in over 100 fraudulent conveyance suits brought by bankruptcy trustee)

### Other Complex Litigation

Carella Byrne also has extensive experience managing far flung litigations involving extensive damages such as this one. In 1990, Carella Byrne was appointed Trustee/Receiver by the United States District Court, District of New Jersey, in connection with securities law violations by Eddie Antar, founder of the defunct consumer electronics chain Crazy Eddie, *Securities and Exchange Commission v. Eddie Antar et al.*, Civil Action No. 89-3773 (JCL).

The Antar Receivership required Carella Byrne to work with the Securities and Exchange Commission (“SEC”), and to commence litigation in numerous foreign jurisdictions, including Switzerland, Canada, Liechtenstein and Israel, in an effort to repatriate and recover millions of dollars in illegally obtained assets which Mr. Antar had diverted from the Crazy Eddie chain.

In its capacity as Trustee/Receiver, Carella Byrne recovered over \$80,000,000, which was paid to Mr. Antar’s victims. The SEC has reported that the *Antar* case represented the largest asset recovery in a contested case as of that time. The investment of the assets fully funded all expenses of the receivership and contributed a substantial amount to the settlement fund, even though the receivership extended from 1990 to 2005.

In addition to its other responsibilities Carella Byrne undertook administration of the settlement fund, including addressing tax and lien issues on behalf of the funds and harmed investors, participating in obtaining a tax exempt ruling on fund income from the New Jersey Division of Taxation, and working closely with the claims administrator and the SEC. Notably, in the claims evaluation and payment process, Carella Byrne personally reviewed and evaluated each claim for payment or denial of payment, and communicated the decisions to investors, the SEC and the Court, and appeared in response to any objection or appeal of the claims decisions, none of which was reversed or modified. Carella Byrne also oversaw the distribution process consisting of payments of thousands of checks to investors in a two-tier distribution process administered by the claims administrator and the bank. Finally, investor contact information was maintained and updated for future distributions in a related case.

## Carella, Byrne

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Carella, Byrne has also appeared either as trustee, receiver or counsel in: *Federal Trade Commission v. Oak Tree Numismatics, et al.* (D.N.J.) (control and operation of a rare coin dealer, distributions to customers, and turn-back of the enterprise to the defendants without exception); *United States v. Sheelan* (D.N.J.) (liquidation of Rule 144 restricted stock as restitution); *Harvey, Attorney General v. Clover Merchant Group et al.* (Superior Court of New Jersey, Essex County Chancery Division) (equitable receivership for fraudulent securities dealer).

Carella Byrne appeared for the bankruptcy trustee in *In Re Robert E. Brennan, Debtor*, Case No. 95-35502(KCF) and *Conway v. Pirates Associates et al.*, Adv. Pro. No. 98-3245(KCF). The *Brennan* matter arose out of claims by the SEC against Robert Brennan, formerly of First Jersey Securities, for securities law violations. Litigation was pursued in various domestic and foreign jurisdictions for the recovery of assets. We were successful in identifying and piercing various off-shore trusts and recovering millions of dollars for the bankruptcy estate, which was used in part to satisfy the SEC's judgment against Brennan.

Further, Carella Byrne is currently actively engaged in the representation of numerous publicly traded pharmaceutical companies in sophisticated patent infringement cases, some of which involve drug sales in the multi-billion dollar range. Representative clients in the patent litigation field include: (1) Apotex, Inc.; (2) Barr Laboratories; (3) Watson Pharmaceuticals; (4) Lupin Pharmaceuticals; (5) Sonofi-Aventis; (6) Aurobindo; and (7) Ivax Corp.

## Carella, Byrne

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### **REAL ESTATE, LAND USE AND RESORT DEVELOPMENT**

The Firm handles all aspects of transactions involving residential, commercial and industrial properties for both corporate and individual clients. Such transactions involve the preparation and review of real estate and financial documentation, environmental matters, land use regulations, and other related matters. Condominium transactions, including the formation of the condominium project and its approval by the regulatory authorities, and the preparation of the registration statement are included within this area.

The Firm's representation of land developers includes the preparation with the developer of Planning Board Applications, and the appearance before such Boards in connection with applications for subdivisions, variances and site plans. In this connection, the Firm works with the developer's experts in such areas as architecture, engineering, environmental, and traffic.

The Firm has been engaged in extensive litigation in real estate and related environmental matters, and has both represented and opposed major title companies in complex litigation.

### **Regulatory Practice**

Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein is uniquely qualified to guide its clients through the proliferation of governmental regulation in a number of different areas of the law, from the regulation of casinos, to hospitals, from resource recovery facilities to public utilities.

### **Health Care Law**

In order to effectively operate in today's competitive environment, hospitals and other health care delivery systems must keep pace with technological advances and changes in law and insurance. We do.

Currently we represent and advise a variety of health care clients, from rehabilitation facilities and nursing homes to general acute care hospitals. And our primary concern is to help each organization achieve workable solutions to operational problems. To accomplish this, we identify problems and then offer both short- and long-term recommendations to prevent exposure to legal and financial risks. Most importantly, we provide up-to-date knowledge in a constantly changing regulatory system.

We'll handle all legal matters relevant to operation; policy and regulatory requirement correction; risk management review; and efficient, effective management plan development. And we do it all with a sensitive approach to our clients' concerns.

We have extensive experience representing fiscally distressed hospitals in turn around situations. Our team of experts provides needed direction in the areas of affiliation, corporate restructuring, general workouts, and vendor negotiations, while overseeing crucial day-to-day financial and system operations.

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### **Public Utilities**

Our firm has a well-earned reputation for excellence in litigation and negotiation of public utility matters, with special emphasis on rate applications, alternative energy and cogeneration projects, solid waste litigation, and utility-related public issue negotiation.

In fact, we took the lead in drafting and passage of the “McEnroe Legislation” for resource recovery facilities; we have served as senior counsel in numerous cases before the Board of Public Utilities; and we have worked with major investment banks to provide financing for utility and cogeneration projects.

### **Environmental Law**

We have a broad range of experience in guiding clients through the increasingly complex web of federal and state laws designed to clean up and preserve the environment. We offer counsel on compliance with all government statutes and regulations, as well as their application to commercial and real estate transactions. We can help businesses obtain the needed air, water and waste permits. And our litigation attorneys have extensive trial and appellate experience in a variety of cases, including toxic tort, hazardous waste, products liability, insurance law, and more.

### **Tax**

Our firm has sophisticated experience in New Jersey State tax matters. We represent multi-national and multi-state corporations in planning, compliance, and litigation cases involving corporate income tax, sales and use tax, and other state and local taxes, including property taxes. We also provide services in federal, corporation, partnership, individual and non-profit association tax matters. This includes providing representation before the U.S. Tax Court and Administrative offices of the IRS.

### **Labor Relations**

Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein handle all aspects of labor relations matters in the public and private sectors. Our labor relations practice encompasses representation of management in collective bargaining negotiations, including preparation of management’s contract proposals, acting as management’s chief spokesperson at negotiations, and preparation and finalization of negotiated collective bargaining agreements. In addition, we represent management in the public and private sectors in grievance, disciplinary and binding arbitration proceedings.

We also have extensive experience in handling matters before the New Jersey Public Employment Relations Commission and the National Labor Relations Board and in representing management in labor related litigation in both the state and federal courts.

### **Government Affairs**

Recognizing the need for both adversarial and negotiation excellence in the modern government arena, Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein has developed an extensive public issues practice. Our members have testified before Congress, State Legislatures,

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plus state, county and local governmental and regulatory agencies. To help us retain our leadership role, we are active in a public policy consortium -- the State Capital Law Firm Group -- working within a network of prestigious firms located in every state and throughout the world.

We first work to help our clients focus their concerns, then to develop strategies for implementing their proposals, and finally to act as their representative in every forum of public policy development.

With a strong emphasis on administrative law proceedings and municipal law, we have been successful in representing major national clients in government-related matters. This strength enables us to provide full-service public policy programs for clients, ranging from specific issue representation to integrated crisis management.

### **International Law**

Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein has valuable expertise in various aspects of international law.

Areas of note include airline transportation and trademark litigation involving gray market or parallel imports. Our foreign litigation experience is in the United Kingdom, Canada, Japan, West Germany, Austria, Australia, New Zealand and Italy.

The firm has particular expertise in taking foreign discovery for use in domestic litigation under the Hague Convention as well as Consular Treatises. Additionally, we have special expertise in the international overreach of the U.S. Antitrust Laws and the international transfer of technology. To accomplish this, we maintain a close working relationship with associate counsel in many foreign countries. These firms have special competence in dealing with economic and financial issues, both in their own countries and in regional economic blocks in their region, such as the Common Market.

In connection with our intellectual property law expertise, we file and prosecute patent and trademark applications throughout the world, including the European Patent. And we handle the sale and licensing of technology and trademarks.

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### PARTNERS

**CHARLES C. CARELLA**  
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**CHARLES C. CARELLA** has been a member of Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein since 1976 and is Chairman of the Executive Committee. He has extensive experience in many areas of corporate practice, including mergers and acquisitions, bank finance, both state and federal administrative matters, plus environmental and solid waste matters. He has appeared on numerous occasions before the Board of Public Utilities in all forms of utility matters, and has served as a Trustee/Receiver in matters initiated by the Federal Trade Commission, Securities and Exchange Commission, the Federal District Court for the District of New Jersey and has served as Provisional Director upon appointment by the Superior Court of the State of New Jersey, Chancery Division.

Mr. Carella graduated from Fordham University with a B.S. degree in 1955 (Cum Laude) and received an LL.B. degree from Rutgers University in 1958. He was admitted to the New Jersey Bar in 1959 and the New York Bar in 1983.

He has served as an Assistant Prosecutor as well as Special Prosecutor of Essex County; Director of the New Jersey State Lottery Commission, Executive Secretary to the Governor, State of New Jersey, 1975-1976; Member of the Ethical Standards Commission for the State of New Jersey; as well as Chairman, New Jersey State Racing Commission, 1976-1980. He has served as Chief Counsel to the Passaic Valley Sewerage Commissioners.

Mr. Carella is a member of the Essex County, New Jersey State, New York State and American Bar Associations, the Association of Trial Lawyers of America, and the American Judicature Society. He is a member of the Finance Board of the Archdiocese of Newark, and a Trustee Fellow of Fordham University. He was formerly Chairman of the Board of Trustees of The University of Medicine and Dentistry of New Jersey; a member of the Board of Trustees of Robert Wood Johnson University Hospital; a member of the Board of Trustees of University Health System of New Jersey; a member of the Board of Bally Gaming International, Inc., and a member of The Board of Carteret Savings Bank.

Mr. Carella has been named to *Who's Who in American Law*.

**BRENDAN T. BYRNE**  
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**BRENDAN T. BYRNE** graduated from Princeton University with an A.B. degree in 1949 and received an LL.B. degree from Harvard Law School in 1950.

He served as Prosecutor of Essex County, New Jersey; as President of the New Jersey Public Utility Commission; as Assignment Judge of the New Jersey Superior Court; and then as Governor of New Jersey from 1974-1982.

Mr. Byrne is a former Vice President of the National District Attorney's Association; Chairman of the National Commission on Criminal Justice Standards and Goals; Chairman, National

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Governors Association on International Trade; and trustee of Princeton University. He is an Editor of the New Jersey Law Journal and of Irish Law Reports; and former Chairman of the Princeton University Council on New Jersey Affairs and United States Marshals Foundation. He is a former member of the Board of Directors of Mack Cali Realty and Chelsea GCA.

Mr. Byrne was a member of the Board of Directors of Prudential Insurance Company of America, New Jersey Bell Telephone Company, Elizabethtown Water Company, Jamesway Corporation, Ingersoll-Rand and served as a Commissioner of the New Jersey Sports and Exposition Authority. He was litigation counsel to Carvel Corp. and Witco Corporation.

### JAMES E. CECCHI

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**JAMES E. CECCHI** is a member of the firm's executive committee and specializes in complex civil and chancery litigation in federal and state court as well as the prosecutor of complex federal class actions involving claims arising under federal securities laws, consumer protection laws and antitrust laws. Mr. Cecchi personally handled on behalf of the firm the Exxon class action litigation, Merck Securities litigation, KPMG class action litigation and is currently prosecuting numerous consumer fraud class actions on behalf of the firm. Mr. Cecchi joined the firm in 1994 after serving in the United States Department of Justice as an Assistant United States Attorney for the District of New Jersey. In that capacity, Mr. Cecchi participated in numerous significant criminal prosecutions involving money laundering, narcotics smuggling and violations of federal firearms laws.

Mr. Cecchi graduated from Colgate University in 1989 with honors, majoring in History and Political Science. Mr. Cecchi was Executive Editor of the Colgate News. In 1989 he graduated from Fordham University School of Law and was a member of the International Law Journal. Mr. Cecchi served as Law Clerk to the Honorable Nicholas H. Politan in the United States District Court, District of New Jersey from 1989-1991. He is a member of the Federal, New Jersey State, Essex County and Bergen County Bar Associations.

### JOHN G. GILFILLAN III

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**JOHN G. GILFILLAN III**, a member of the Executive Committee, has been a member of the firm since its inception. He graduated from Villanova University in 1956 with a B.S. degree in mechanical engineering. In 1966 he graduated with a J.D. from Georgetown University Law Center where he served as Associate Editor of the Georgetown Law Journal. He has broad experience in complex technical litigation with particular emphasis on patent, trademark, trade secret, unfair competition and construction matters. In addition, he has handled litigations involving anti-trust, securities fraud and low income housing.

Mr. Gilfillan is a Past Chairman of the Patent, Trademark and Copyright Section of the New Jersey State Bar Association as well as a former member and Chairman of the District 10 Ethics Committee of the New Jersey Supreme Court. He is a member of the American, Federal, New Jersey State and Morris County Bar Associations as well as the American Intellectual Property Association. He was Vice-President, General Counsel and former Chairman of the Executive Committee of the

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American Cancer Society, New Jersey Division, Inc., and has served as a National Delegate to the Board of Trustees of the American Cancer Society. Additionally, he has been a member of the Board of Trustees of Villanova University.

**PETER G. STEWART**  
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**PETER G. STEWART**, a member of the Executive Committee, has been a member of Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein since 1979. He has broad experience in many areas of corporate practice, with emphasis on Health Care, Real Estate Development and Public Utility matters. His practice also includes representing clients before various Local, County and State Agencies and the New Jersey Legislature as registered lobbyist.

Mr. Stewart served as the Mayor of his home town, as an elected member of the Essex County Board of Chosen Freeholders, as an Assemblyman in the New Jersey Legislature, and Chief Counsel to the County of Essex. He served as the General Counsel to the New Jersey State Democratic Committee.

He is an emeritus member of the Board of Lay Trustees of Delbarton School, Morristown, New Jersey, and also a member of the Board of Trustees of Saint Peter's College, Jersey City, New Jersey. He is a member of the Board of Directors of Horizon Blue Cross/Blue Shield of New Jersey. He is a former chairman of the Board of Directors of West Jersey Community Bank and West Jersey Bancshares, Inc., a publicly traded State Charter Commercial Bank.

**ELLIOT M. OLSTEIN**  
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**ELLIOT M. OLSTEIN**, a member of the Executive Committee, has broad experience in intellectual property law including securing patent protection; licensing of technical information and patents; infringement and validity opinions; evaluating intellectual property rights for investors; and intellectual property litigation. His particular areas of expertise include chemical and biochemical inventions with particular emphasis on their medical applications.

He also has experience in corporate law and business financing, including venture capital financing, with specific emphasis on technically-oriented business.

Mr. Olstein graduated from Columbia College and Columbia School of Engineering, receiving an A.B. Degree in 1960 and a B.S.Ch.E. in 1961. He received a J.D. Degree from Georgetown University Law Center in 1965 and an LL.M. in taxation from New York University.

Mr. Olstein served for three years as Chairman of the Patents, Trademarks, Copyrights and Unfair Competition Section of the New Jersey Bar Association and is admitted to practice in the States of New Jersey, New York, and Virginia.

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**ARTHUR T. VANDERBILT II**  
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**ARTHUR T. VANDERBILT II** joined Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein in 1982. Since 1978, Mr. Vanderbilt has specialized in public finance law. He has been listed in the "Red Book" of approved municipal bond attorneys in the United States for over twenty-five years. He has had broad experience in general obligation bond and revenue bond financings as Bond Counsel, underwriter's counsel, and trustee's counsel, and has been involved with billions of dollars of financings. In addition, Mr. Vanderbilt has represented many clients before the New Jersey Board of Public Utilities, and is a registered Governmental Affairs Agent.

Mr. Vanderbilt graduated with an A.B. degree from Wesleyan University (magna cum laude) in 1972 and with a J.D. degree from the University of Virginia School of Law in 1975.

After a judicial clerkship with the Hon. Herman D. Michels, Presiding Judge of the New Jersey Superior Court, Appellate Division, Mr. Vanderbilt served as Deputy Attorney General of New Jersey, and Counsel to the New Jersey Board of Public Utilities. Before joining Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart, & Olstein, he served as Assistant Counsel to the Governor of New Jersey.

Mr. Vanderbilt is listed in Who's Who in America, and, as the author of many books and articles about the law, in Contemporary Authors. He won the American Bar Association's Scribes Award in 1976 for the best book about the law published that year, and was inducted into the New Jersey Literary Hall of Fame in 2001. Mr. Vanderbilt served as a member and chairman of a Supreme Court District Ethics Committee, and was a member of the Supreme Court's Advisory Committee on Professional Ethics and a member of the New Jersey State Bar Association's Task Force on Attorney Disciplinary System. He has served as a member and president of the Board of Trustees of the Elizabeth, New Jersey Presbytery; the Summit, New Jersey Free Public Library; The Manley-Winser Foundation and Greenwood Gardens. He is a member of the American Bar Association, the New Jersey Bar Association, and the National Association of Bond Lawyers. He was named a fellow of the American Bar Foundation in 2000.

**JAN ALAN BRODY**  
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**JAN ALAN BRODY** a member of the Executive Committee, became associated with the firm of Cecchi & Politan in 1976. He became a partner in 1982 and, in 1987, the firm name was changed to Cecchi, Brody & Agnello when partner Nicholas H. Politan became a United States District Court Judge.

Mr. Brody graduated from Boston University cum laude in 1973 with an A.B. degree in political science. In 1976, he graduated Boston University Law School with a Juris Doctor degree. He has had extensive experience in complex civil and chancery litigation and has a substantial family law practice.

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He is a member of the American, New Jersey State, and Bergen County Bar Associations. He has also served as counsel for the Fort Lee Planning Board and as a Standing Master appointed by the United States District Court for the District of New Jersey.

**JOHN M. AGNELLO**  
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**JOHN M. AGNELLO** joined the firm of Cecchi and Politan in 1979. In 1983, he became a partner in the firm. In 1987, he became a name partner as the firm's name was changed to Cecchi, Brody & Agnello after Nicholas H. Politan became a U.S. District Court Judge. Cecchi, Brody and Agnello merged with Carella, Byrne in 1990 at which time Mr. Agnello became a partner in Carella, Byrne.

Mr. Agnello graduated from Stevens Institute of Technology in 1975 receiving a B.E. with Honor in mechanical engineering. In 1979, he graduated from Seton Hall University School of Law receiving a J.D., Cum Laude. He has extensive experience in complex commercial litigation with particular emphasis on environmental, insurance coverage, ERISA and construction cases. Additionally, he has a substantial labor practice representing management (both public and private) in collective bargaining negotiations, labor mediation and arbitration proceedings, as well as actions before the National Labor Relations Board and the New Jersey Public Employment Relations Commission. Mr. Agnello also represents ERISA Pension and Welfare Funds.

He is a member of the American, Federal, New Jersey State, and Bergen County Bar Associations.

**CHARLES M. CARELLA**  
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**CHARLES M. CARELLA** is experienced in general counsel law, municipal law, bankruptcy matters including corporate insolvency and creditors' rights and general litigation. He received his B.S. in mechanical engineering from Lehigh University in 1979 and his M.B.A. from Iona College's Hagan School of Business in 1985. He received his J.D. degree from Fordham University School of Law in 1989. He is admitted to the Bars of the State of New Jersey; The United States District Court for the District of New Jersey; the State of New York; and the United States District Courts for the Southern and Eastern Districts of New York. He is a member of the New Jersey State and New York Bar Associations. He is currently outside General Counsel for the Archdiocese of Newark and is a member of the Professionals Group Advisory Council for Valley National Bank. He was formerly Township Attorney for the Township of Nutley, New Jersey, 1996. He formerly served as a member of the Board of Trustees of Caldwell College and a member of the Board of Governors of the CYO Youth Ministries of the Archdiocese of Newark, New Jersey.

**JAMES T. BYERS**  
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**JAMES T. BYERS** has been a member of Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein since 1981 and during that time has been engaged in general corporate, real estate and banking law and tax exempt bond financing. He has broad expertise in many areas of corporate

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practice, including real estate and asset based lending, mergers and acquisitions, purchase and sale of real estate and corporate counseling; and as Bond Counsel in connection with the issuance of tax exempt bonds. Mr. Byers graduated from Rutgers College with an A.B. degree in 1974 and received a J.D. degree from George Washington University in 1979. He has lectured and participated in panel discussions on financing and banking law subjects. He is a member of the American and New Jersey State Bar Associations and a member of the National Association of Bond Lawyers.

**DONALD F. MICELI**  
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**DONALD F. MICELI** specializes in financial matters including federal income taxation, state and real property taxation, taxation litigation and rate making matters before the New Jersey Board of Public Utilities. His practice also includes the representation of developers before local planning boards. He received a B.A. degree from Seton Hall University, an LL.B. degree from Rutgers University, and an LL.M. degree from New York University. He is admitted to the bar of the State of New Jersey and the United States Tax Court. Mr. Miceli has served as Assistant Corporation Counsel, City of Newark, and as Tax Consultant to the Essex County Board of Taxation.

**A. RICHARD ROSS**  
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**A. RICHARD ROSS** is a member of the Litigation and Corporate Departments of the Firm. He has broad experience in complex litigation, corporate, securities, tort and banking matters. Mr. Ross is particularly experienced in international matters including asset recovery and transnational commercial ventures. He also has extensive experience in equity practice and equitable receiverships, and has engaged in a wide range of real estate, trust and estates and commercial loan transactions. Mr. Ross graduated with a B.A. degree from Reed College in 1972, and received a J.D. degree from New York Law School in 1977. He served as a Staff Attorney in the Office of the President, New Jersey Civil Service Commission in 1977, and in the Office of Legal Counsel, New Jersey Supreme Court from 1978-1982, where he also served as an ex-officio member of the Supreme Court Committee on Civil Practice. He is a member of the New Jersey Supreme Court and District Ethics Committee, New Jersey State Bar Association and the American Bar Association (member of the International, Litigation, Business Law, Tort and Insurance and Real Estate, Property and Probate Sections). Mr. Ross has numerous reported decisions including SEC v. Antar, 831 F. Supp. 380 (D.N.J. 1993), judgment aff'd 54 F. 3d 770 (3d Cir. 1995); In re. National Smelting Inc. of New Jersey Bondholders' Litigation, 722 F. Supp. 152 (D.N.J. 1989); and Reinfeld Inc. v. Schieffelin & Co., 94 N.J.(1984). Mr. Ross was a merit selection to the 2005 New Jersey "Super Lawyers".

**KENNETH L. WINTERS**  
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**KENNETH L. WINTERS** is primarily engaged in the areas of construction law, anti-trust, trademarks, copyrights, constitutional challenges to commercial regulatory statutes, computer and software law and general disputes. He also has extensive appellate experience. Mr. Winters graduated from the University of South Carolina in 1977 with a Bachelor of Arts Degree (magna cum laude), and became a member of Phi Beta Kappa that year. He received his J.D. degree from Duke University in 1980. He served a one year clerkship with a judge of the Superior Court of New

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Jersey and thereafter has been in private practice. Mr. Winters is admitted to the state and federal bars of New Jersey, and to the bars of the United States Courts of Appeal for the Third Circuit, the Federal Circuit, and the Eleventh Circuit. He is a member of the American, New Jersey State, and Essex County Bar Associations.

**JEFFREY A. COOPER**  
[JCooper@CarellaByrne.com](mailto:JCooper@CarellaByrne.com)

**JEFFREY A. COOPER** specializes in bankruptcy matters involving corporate insolvency and creditors' rights litigation. He received his B.A. degree in History from Yale University in 1977 and his J.D. degree from Cornell University, 1980, where he was a Member Phi Alpha Phi. Jeffrey was an Assistant Prosecutor, Essex County, New Jersey from 1981 – 1983, a Member of the Fee Arbitration Committee District VC, Essex County, 1991 – 1995 and a Master, Bankruptcy Inn of Court, 1993 – 1994. He is admitted to the Bars of the State of New Jersey; the United States District Court for the District of New Jersey; the State of New York, the United States District Courts for the Southern and Eastern Districts of New York; and the United States Courts of Appeal for the Second and Third Circuits. He is a Member, New Jersey State Bar Association and the American Bankruptcy Institute. Jeffrey has been a Member of the Merit Selection Panel (which recommends bankruptcy judge appointments to the Third Circuit Court of Appeals) in 1998, 2000 and 2001. He also has been selected as a "Super Lawyer" in 2005 and 2006. Jeffrey is a Member of the Board of Directors and also the Chair of the Bankruptcy Section of the State Capital Global Law Firm Group, an association of law firms around the world.

**CARL R. WOODWARD III**  
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**CARL R. WOODWARD III** is experienced in environmental law, municipal law, zoning and planning, real estate, insurance, personal injury and general civil litigation. He received a B.A. degree, Rutgers University, 1965, and a J.D. degree, Rutgers University of Law, Newark, New Jersey, 1968. He served as Captain, United States Army, 1969-1971. Mr. Woodward was Law Secretary to the Honorable Baruch S. Seidman, Superior Court of New Jersey, Chancery Division. He served as Assistant United States Attorney, District of New Jersey, Chief, Environmental Protection Division, 1971-1978. He is Township Attorney, Township of Chatham, 1992-present, Attorney, Borough of New Providence 1995-present, and Township Attorney, Township of Cranford 2007. He was formerly Attorney, Chatham Township Board of Adjustment, 1979-1992 and Attorney, Borough of New Providence Planning Board 1986-1994. He was Adjunct Professor of Law, Seton Hall University School of Law in 1985; President of the Rutgers Alumni Association from 1984-1985; and Trustee of Rutgers University from 1985-1991. He currently serves as a Trustee of the New Jersey Institute of Local Government Attorneys. He is a member of the American Bar Association, New Jersey State Bar Association, and Morris County Bar Association.

**MELISSA E. FLAX**  
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**MELISSA E. FLAX** is a member of the Litigation Department of the firm. She received an A.B. Degree from the University of Michigan; American University, London, England and a J.D.

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Degree from Loyola University where she was a member of Loyola University Law Review. Ms. Flax served as a Law Clerk from 1992-1993 to Hon. Julio M. Fuentes, Superior Court of New Jersey, Essex County. She is a member of New Jersey State and New York State Bar Associations.

**DENNIS F. GLEASON**  
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**DENNIS F. GLEASON** is a graduate of the City University of New York having received a Bachelor of Arts in 1975. In 1980 he received a Master of Arts from New York University. Mr. Gleason received his *Juris Doctor* from Seton Hall University School of Law in 1986 and was admitted to practice to the New Jersey Bar and United States District Court for the District of New Jersey in 1987. He is also admitted to practice before the United States Supreme Court; the United States Courts of Appeals for the Federal, Third, Sixth, and Seventh Circuits. He has also been admitted to numerous United States District Courts throughout the country. His practice focuses on commercial and complex litigation with particular emphasis in area the of intellectual property matters including patents, trademarks, copyrights, unfair competition and trade secrets. Mr. Gleason has also litigated matters on behalf of policyholders regarding insurance coverage and defended employment discrimination claims. Mr. Gleason also lectures and publishes in the areas of litigation procedure and intellectual property litigation. Mr. Gleason is member of the American Bar Association (Litigation and Intellectual Property Sections); New Jersey Bar Association (Vice President Federal Practice and Procedure Section); and Association of the Federal Bar of the State of New Jersey.

**DAVID G. GILFILLAN**  
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**DAVID G. GILFILLAN**, born Washington, D.C., April 23, 1966; admitted to bar, 1993, New Jersey and U.S. District Court, District of New Jersey. Education: Boston College (B.A., 1988); Seton Hall University (J.D., 1993). Member, Worrall F. Mountain Inn of Court. Reported Cases: Handy & Harmon, et al v. Borough of Park Ridge, 302 NJ Super. 558 (App. Div. 1997).

**G. GLENNON TROUBLEFIELD**  
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**G. GLENNON TROUBLEFIELD**, born Belleville, New Jersey, October 3, 1966; admitted to bar, 1991, New Jersey and U.S. District Court, District of New Jersey; 1992, Pennsylvania and U.S. District Court, Eastern District of Pennsylvania; registered to practice before U.S. Patent and Trademark Office. Education: University of Pittsburgh (B.S.M.E., 1988); Seton Hall University (J.D., 1991). Law Clerk to Honorable Virginia A. Long, Judge, New Jersey Superior Court, Appellate Division, 1991-1992. Member, 1989-1990, Articles Editor, 1990-1991, Seton Hall Legislative Law Journal. Member: New Jersey State, Garden State and American Bar Associations. Practice Areas: Patents; Trademarks; Copyrights; Unfair Competition; Intellectual Property Litigation.

## Carella, Byrne

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**BRIAN H. FENLON**  
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**BRIAN H. FENLON**, born New York, N.Y., October 30, 1962; admitted to bar, 1987, New Jersey and U.S. District Court, District of New Jersey. Education: Muhlenberg College (A.B., 1984); Seton Hall University (J.D., 1987). Phi Alpha Theta. Member: Morris County and Essex County Bar Associations; Worral F. Mountain Inns of Court.

**KHOREN BANDAZIAN**  
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**KHOREN BANDAZIAN**, born Richmond, VA, February 7, 1969; admitted to bar, 1995, New Jersey, 1996, New York; Education: Northeastern University (B.S., 1991), Pace University (J.D. 1995). Mr. Bandazian represents individuals, contractors/builders, and developers in all areas of real estate acquisition, financing, leasing, development and sales. He also serves as counsel to lenders in connection with commercial lending. He is counsel to many small business and advises them on the many day-to-day legal issues which face the business community. He is active in the practice of community association law and represents developers in connection with many condominium conversion projects. He is a member of the New Jersey Community Association Institute and serves as a Board of Director for the Community Builder's Association. He is active in his community and also serves on the boards of other charitable organizations. He is president of the Board for the Co-Op where he resides in Fort Lee, New Jersey with his wife and two children.

## OF COUNSEL

**RICHARD K. MATANLE** has broad experience in real estate, banking, general contract and business matters as well as commercial litigation. Within these fields of concentration, he has extensive experience in commercial lending and real estate transactions, including commercial real property leasing. His commercial loan transaction experience includes creditors' rights, litigation and loan workouts. He received a B.A. degree from the State University of New York at Buffalo and a J.D. degree from Hofstra University School of Law. Mr. Matanle was previously Associate Counsel with the Chase Manhattan Bank, N.A. and a partner in the law firm of Blackburn, Rice and Matanle. He also served as counsel with the Federal Deposit Insurance Corporation. He is admitted to the Bars of the State of New Jersey and New York and to the Bars of the United States District Courts in both States.

**DONALD S. BROOKS** received a B.A. degree from Columbia College and an LLB degree from Columbia University Law School. He served as a Trial Attorney with the National Labor Relations Board and immediately prior to joining Carella, Byrne, he was Senior Counsel for Merck & Co., Inc. During his twenty-seven-year career with Merck, Mr. Brooks coordinated a wide variety of general corporate work for the company, including negotiations and preparation of contracts, regulatory compliance and worldwide labor relations activities. Most recently he supervised the legal aspects of the company's worldwide technology transfer activities, including planning, negotiations and drafting licensing agreements, strategic alliances and joint as well as marketing, distribution, supply and research related agreements. Mr. Brooks has also served as a U.S. delegate to the International Labor Organization in Geneva, Switzerland. He is a member of the

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New Jersey and Pennsylvania Bar Association and has served as Chairman of the Corporate Law Section of the New Jersey Bar Association. Mr. Brooks is also a member of the New York Bar and has published articles on labor relations, joint ventures and training and development in corporate law departments.

**FRANCIS C. HAND**, born New York, N.Y.; admitted to bar, 1964, District of Columbia; 1965, New York; 1971, New Jersey; registered to practice before U.S. Patent and Trademark Office. Education: Manhattan College (B.C.E.); Georgetown University (J.D.). Arbitrator, American Arbitration Association. Member: New York State, New Jersey State and American Bar Associations; The District of Columbia Bar. Mr. Hand was previously a partner in the patent law firm of Kenyon & Kenyon for twenty years and presently represents domestic and foreign corporations in the prosecution of patents and trademarks and the litigation of patents in the federal courts. Practice Areas: Patents; Trademarks; Licensing; Litigation.

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Standing Committee on Lawyers' Professional Liability, September 1998 "Self-Help in 2000: How a business can do its own Y2K compliance without violating copyright laws", Intellectual Property Supplement, *New Jersey Law Journal*, July 20, 1998; "State and Local Taxation of Software: A Trap for the Unwary CIO" Chief Information Officer Journal, Fall 1989. Lectures: "Intellectual Property Basics for Health Care Attorneys", 2004 Health & Hospital Law Symposium, New Jersey Institute for Continuing Legal Education, October, 15, 2004; "Hot Topics in Copyright Law", 2003 Intellectual Property Summit, New Jersey Institute For Continuing Legal Education, May 2, 2003; "The Inside Track on Copyright Law", WYNY 103.5 First Annual "Country Holiday Expo" songwriters' seminar, November 18, 1995. Practice areas: Commercial Litigation; Intellectual Property Litigation; Bankruptcy.

**RAYMOND W. FISHER**, born Newark, New Jersey, June 8, 1949; admitted to bar, 1975, New Jersey and U.S. District Court, District Court of New Jersey; 1981, U.S. Supreme Court; 1982, U.S. Court of Appeals, Third Circuit. Education: Georgetown University (B.A., cum laude, 1971); Fordham University (J.D., 1975). Phi Beta Kappa. Member, Fordham Law Review, 1974-1975. Clerk to Honorable Thomas F. Murphy, United States District Court Judge, Southern District of New York, 1975-1976. Member New Jersey State and American Bar Association. Practice Areas: Litigation and Appeals in state and federal courts; General Practice; Employment Law; Commercial Law; Computer Law.

**DAVID J. REICH** specializes in complex commercial litigation, health care litigation and intellectual property litigation. He graduated from Yale University cum laude with distinction in American History in 1975 and received his J.D. degree from the University of Pennsylvania in 1978. Mr. Reich served as a Law Secretary to Hon. Alan B. Handler, Associate Justice of the New Jersey Supreme Court from 1978-1979. He is admitted to the bars of the State of New Jersey, the United States District Court of the State of New Jersey, the State of New York, the United States District Court of the Southern and Eastern Districts of New York and the United States Courts of Appeals for the Third and Seventh Circuits.

**DECANDA M. FAULK**, joins the firm as Of Counsel and will head its health law department where she will continue to counsel clients in business development and transactions, including physician contracting and other multi-faceted provider contracting relationships, joint ventures, mergers and acquisitions, not-for-profit/tax-exempt and bond financing matters; State and Federal regulatory monitoring, including compliance initiatives, EMTALA, HIPAA; accreditation and third-party payer issues; and State and Federal investigations.

Ms. Faulk is a graduate of Rutgers School of Law-Newark where she currently serves as an adjunct professor and teaches Health Law courses. She received her undergraduate degree from Rutgers University College of Nursing and worked for several years as a critical care nurse and in the area of quality assurance and utilization review prior to becoming an attorney. Ms. Faulk comes to the firm with several years of experience in health law, having recently managed her own health law firm, Faulk & Associates, LLC, where she represented health care clients, including hospitals, health systems, home care agencies, individual physicians/group practices and a host of other health-related clients. She has previously worked in law firms, academia, government and the pharmaceutical industry. Ms. Faulk has also served as a County Hearing Officer. She is licensed to practice law in the states of New Jersey and New York.

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Ms. Faulk is certified in health care compliance and is a published author and a frequent lecturer in the field of health and pharmaceutical law. She is on the American Health Lawyers Alternative Dispute Resolution Services list in which health care clients may select mediators to resolve their disputes and is the Past Chair and board member of the New Jersey State Bar Association's Health and Hospital Law Section. She has also held board and officer positions with various organizations of which she has very active memberships. She recently completed a two-year term on the New Jersey State Bar Association's Legislative Committee and served on New Jersey Governor Corzine's 2006 Health Care and Senior Policy Issues' Transition Team, Newark Mayor Cory Booker's 2006 Health Care Services Transition Team, and The Sharing Network's New Jersey Organ Donation Task Force (2003), which is part of her ongoing commitment to effect health care policy changes vital to health care in New Jersey. She also frequently hosts community awareness and public advocacy forums on health and pharmaceutical legal issues. Additionally, she is a mentor to law, high school, and grammar school students.

Ms. Faulk has been selected by Manchester Who's Who Among Executives and Professionals and as a New Jersey Superlawyers 2006 Rising Star. She is also the recipient of Sigma Gamma Rho Sorority, Inc. Theta Ph Sigma Alumnae Chapter 2006 Woman of Distinction Award and the YMCA of New Jersey 2003 New Jersey Minority Achiever Award.

**Areas of Expertise:** Health and Pharmaceutical Law, including Compliance, Fraud and Abuse, Privacy, Food and Drug Administration, including Clinical Studies Phases I-IV, Marketing and Advertising, Best Price, Rebates/Discounts; and Intellectual Property Law, including Licensing.

**Additional Areas of Practice:** Commercial and General Corporate; E-Business/Internet and Information Technology; Education, including Special Education; General Litigation, including Municipal and Superior Court matters, Administrative Law Hearings, Professional Review Boards, Guardianships; Medicaid Estate Planning, Trusts, Estate and Tax law.

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### ASSOCIATES

**RAYMOND J. LILLIE** has experience in patent and trademark cases, including patent application prosecution, interferences, and validity and infringement studies. Mr. Lillie received his B.S. degree (magna cum laude) from the University of Scranton in 1981. He received a J.D. degree from the Marshall-Wythe School of Law, College of William and Mary in 1984. He is registered to practice before the United States Patent and Trademark Office.

He is a member of the American and New Jersey State Bar Associations, and a Fourth Degree member of the Knights of Columbus.

**WILLIAM SQUIRE** graduated from Newark College of Engineering (NJIT) in 1959 with a BS degree in Mechanical Engineering. In 1968, he received his juris doctor degree from Seton Hall University, Newark, N.J. He is admitted to the bar of the State of New Jersey. He is admitted to the United States District Court for the District of New Jersey, the United States Supreme Court and the Court of Appeals for the Federal Circuit. He is a registered patent attorney in the United States Patent and Trademark Office, having been registered in 1970.

He is a member of the New Jersey State Bar Association, The American Intellectual Property Law Association and The New Jersey Intellectual Property Law Association.

**ALAN J. GRANT**, born Brooklyn, New York, March 8, 1950; admitted to bar, 1985, New York; 1989, U.S. District Court, Southern and Eastern Districts of New York; 1993, U.S. Court of Appeals, Federal Circuit; registered to practice before U.S. Patent and Trademark Office. (Not admitted in New Jersey). Education: St. Francis College (B.S., 1972); State University of New York, Downstate Medical Center (Ph.D., 1979); Brooklyn Law School (J.D., 1985). Member: New York State Bar Association. Practice Areas: Patent Law; Trademark; Copyright.

**LAURA S. MUNZER**, born Paterson, New Jersey, December 22, 1957; admitted to bar, 1983, New Jersey. Education: Princeton University (A.B., 1979); Boston University (J.D., 1982). She is counsel to the Passaic City Democratic Club. Practice Areas: Real Estate Law; Wills and Estates.

**MARC D. MICELI**, born Belleville, New Jersey, October 25, 1970; admitted to bar, 1999, New Jersey, Massachusetts and U.S. District Court, District of New Jersey; 2006, U.S. District Court, Southern and Eastern Districts of New York; 2001, U.S. Tax Court. Education: University of Illinois (B.A., 1994; B.M., 1994; M.M., 1995); Case Western Reserve University (J.D., 1998); Boston University (LL.M., Taxation, 2001). Member: New Jersey State, Massachusetts, American Bar Association and American Bankruptcy Institute. Practice Areas: Financial Restructuring and Bankruptcy; Federal and State Taxation; Commercial Litigation.

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**RAYMOND E. STAUFFER**, born Queens, New York, February 24, 1966; admitted to bar, 2000, New York and U.S. District Court, Southern and Eastern Districts of New York; 2006, U.S. Court of Appeals for the Federal Circuit; registered to practice before U.S. Patent and Trademark Office. (Not admitted in New Jersey). Education: State University of New York at Old Westbury (B.S., Chemistry, 1993); Brooklyn Law School (J.D., 1997). Moot Court Honor Society. Member: Association of the Bar of the City of New York; American Chemical Society (Member, Section on: Chemistry and the Law); American Intellectual Property Law Association (Voting Member, Committees on: Chemical Practice; Interference; and Licensing and Management of IP Assets). Practice Areas: Patent Prosecution, Litigation, Opinion Drafting, Counseling, and Licensing, as relates to Pharmaceuticals, Chemicals, and Biotechnologies.

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**STANLEY J. YELLIN**, born New York, New York, March 30, 1948; admitted to bar, 1973, Connecticut and New York; 1976, U.S. Tax Court; 1978, New Jersey and U.S. District Court, District of New Jersey. Education: Queens College (B.A., 1969); University of Connecticut School of Law (J.D. 1972); New York University School of Law (LL.M. in Taxation, 1976). Adjunct Professor, Fairleigh Dickinson University, M.S. in taxation program 1983-1990; Author: Business Acquisitions: *Tax & Legal Guide*, Panel Publishers, 1987; *Bank Tax Report*, Warren Gorham & Lamont, 1976-1992. Practice Areas: Estate Planning and Administration, Tax Planning; Business Formations, Sales and Acquisitions; Real Estate.

**STEPHEN R. DANEK**, born Newark, New Jersey, May 3, 1964; admitted to bar 1989, New Jersey and U.S. District Court, District of New Jersey, 1989. Education: Muhlenberg College (B.A., Political Science, 1986); Seton Hall School of Law (J.D. 1989). Practice Areas: Personal Injury Litigation; Environmental Law.

**DANIEL J. MULLIGAN**, born Heidelberg, Germany, May 7, 1970; admitted to bar, 1997, New Jersey; 2000, Pennsylvania. Education: Dartmouth College (B.A., 1992); University of Iowa (J.D., with high distinction, 1996). Order of the Coif. Member: New Jersey State and American Bar Associations; Dartmouth Lawyers' Association. Practice Areas: Commercial Litigation.

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